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7

8 **UNITED STATES BANKRUPTCY COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **NORTHERN DIVISION**

11
12 In re Case No. 9:19-bk-11573-MB
13 HVI CAT CANYON, INC., Chapter 11
14 Debtor.

15 **NOTICE OF HEARING ON TRUSTEE'S**
16 **MOTION FOR APPROVAL OF**
17 **STIPULATION BETWEEN MICHAEL A.**
MCCONNELL, TRUSTEE, AND UBS AG,
LONDON BRANCH AND UBS AG,
STAMFORD BRANCH RE LITIGATION
FUND AND ROYALTY FUND

18 **Hearing:**
19 [VIA ZOOM]
20 Date: December 15, 2020
Time: 10:30 a.m.
Place: Courtroom "201"
1415 State Street
Santa Barbara, California

22 **PLEASE TAKE NOTICE** that on December 15, 2020 at 10:30 a.m., in Courtroom 201 of
23 the United States Bankruptcy Court, located at 1415 State Street, Santa Barbara, California 93101,
24 a hearing will be held on the *Trustee's Motion for Approval of Stipulation Between Michael A.*
25 *McConnell, Trustee, and UBS AG, London Branch and UBS AG, Stamford Branch re Litigation*
26 *Fund and Royalty Fund (docket no. 1411)*, filed by Michael A. McConnell, the Chapter 11 trustee
27 (the "Trustee") for the estate of HVI Cat Canyon, Inc. (the "Debtor").
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1 **PLEASE TAKE FURTHER NOTICE** that notwithstanding any language in this Notice
2 advising or suggesting that the hearing will be held physically in one of the Court's courtrooms,
3 please be advised that due to the COVID-19 pandemic, the Court will conduct the hearing
4 remotely, using ZoomGov audio and video technology pursuant to the instructions of the Court,
5 which instructions are located on Judge Barash's publicly posted hearing calendar and may be
6 viewed online at: http://ecf-ciao.cacb.uscourts.gov/Posted/MB_110520.pdf. Individuals will not be
7 permitted access to the courtroom. Consistent with such calendar, the following information and
8 instructions are provided to interested parties:

9 **All hearings on this calendar will be conducted remotely, using ZoomGov video and
10 audio.**

11 Parties in interest and members of the public may connect to the video and audio feeds, free
12 of charge, using the connection information provided below.

13
14 Individuals may participate by ZoomGov video and audio using a personal computer
15 (equipped with camera, microphone and speaker), or a handheld mobile device (such as an
16 iPhone or Android phone). Individuals may opt to participate by audio only using a
17 telephone (standard telephone charges may apply).

18
19 Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration
20 is required. The audio portion of each hearing will be recorded electronically by the Court
21 and constitutes its official record.

22
23 **Video/audio web address: <https://cacb.zoomgov.com/j/1603597060>**

24 **ZoomGov meeting number: 160 359 7060**

25 **Password: 510874**

26 **Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666**

1 For more information on appearing before Judge Barash by ZoomGov, please see the
2 information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's
3 website at: <https://www.cacb.uscourts.gov/judges/honorable-martin-r-barash> under the tab
4 "Telephonic Instructions."

5
6 PLEASE TAKE FURTHER NOTICE that the Motion seeks entry of an order approving the
7 Stipulation (the "Stipulation") between the Trustee and UBS AG, London Branch and UBS AG,
8 Stamford Branch (collectively "UBS") re Litigation Fund and Royalty Fund.

9 The Stipulation establishes how the \$1,000,000 Litigation Fund ("Litigation Fund") and
10 \$500,000 Appeals Escrow, established under the Asset Purchase Agreement ("APA") approved by
11 the Court on October 13, 2020 (the "Sale Order") (*docket no. 1393*), will be utilized by the Trustee
12 or any successor, including the following materials terms:

13 1. The funds in the Litigation Fund will be administered through a liquidation trust,
14 continuation of the Chapter 11 case, or through the Chapter 7 case if the case is converted.

15 2. Any unused funds in the Appeals Escrow shall be paid over to UBS promptly after
16 the sale orders and the abandonment order become final, non-appealable orders, or any appeals of
17 such orders have been dismissed or otherwise finally adjudicated or resolved.

18 3. The Litigation Fund will be held in a segregated account and utilized only as
19 follows:

20 a. All the fees and expenses of special litigation counsel, forensic accountants
21 and other experts duly employed by the Trustee or successor Chapter 7 Trustee and approved by
22 UBS in its reasonable discretion in investigating and prosecuting such insider litigation claims.
23 The Trustee shall from time to time provide appropriate litigation plans and budgets to UBS,
24 pursuit and expenditure of which shall be subject to UBS' approval not to be unreasonably
25 withheld, and shall as appropriate enter into settlements subject to any applicable Court approval
26 and upon UBS' approval not to be unreasonably withheld;

27 b. All of the fees and expenses of the Trustee, and successor Trustee or Chapter
28 7 Trustee from and after the Effective Date (as defined below), including without limitation the

1 reasonable fees and expenses of the Trustee and his or her duly employed accountants, experts and
2 counsel; or if the case remains in a Chapter 11 or is converted to Chapter 7, all of the reasonable
3 administrative expenses of the Bankruptcy Case, including without limitation the reasonable fees
4 and expenses of the Chapter 7 or 11 trustee and all of his or her duly-employed professionals, from
5 and after the Effective Date; and

6 c. As used herein, in the event the case is converted to Chapter 7, the "Effective
7 Date" shall be the conversion date; in the event that the case remains in a Chapter 11 the Effective
8 Date shall be November 5, 2020.

9 4. Any recoveries from litigation claims of the estate will be used to make payments in
10 the following order:

11 (1) fees and costs of the litigation including without limitation loans made to
12 finance such litigation (including payment in full of the Additional Advance to UBS),

13 (2) any remaining unpaid balance of the Trustee's post-petition borrowing after
14 providing for carveouts agreed to by UBS from its liens securing that post-petition borrowing, and

15 (3) after repayment of the Trustee's post-petition borrowing from UBS
16 including the Additional Advance, the balance shall be paid to unsecured creditors in the amounts
17 and according to the priority set forth in the Bankruptcy Code.

18 In satisfaction of obligations under existing stipulations with mineral owners previously
19 entered, UBS agrees to carve-out from any actual cash distribution it is otherwise entitled to receive
20 from the litigation fund pursuant to this paragraph (i.e. after repayment of fees, costs and loans to
21 fund the litigation and the post-petition borrowing including the Additional Advance), 5% for the
22 benefit of unsecured creditors other than UBS (the "UBS Step Back").

23 The UBS Step Back shall otherwise be distributed according to the priority set forth under
24 the Bankruptcy Code. The agreement of UBS to the UBS Step Back shall be in satisfaction of its
25 agreement under existing stipulations, and not create duplicative obligations.

26 5. The Bankruptcy Court shall have jurisdiction to hear any disputes arising from or
27 relating to the Litigation Fund as core matters, and the parties waive any jury trial right and agree
28 that the Bankruptcy Court may enter final orders or judgments thereon.

1 6. The Trustee and UBS agree that insufficient cash proceeds were generated from the
2 sale to satisfy the conditions required to set aside a Royalty Fund.

3 7. Nothing contained herein shall impair the Trustee's right to abandon any assets of
4 the estate. However, with respect to the Litigation Fund, if the Trustee determines in his business
5 judgment, upon notice to creditors, that no purpose would be served in pursuing the estate's
6 litigation claims, the balance of the funds after repaying first to items 4(1) and 4(2) above, and
7 second to any loans obtained in financing the litigation (including the Additional Advance), shall
8 remain property of the estate to be distributed to creditors in the order and priority as provided in
9 the Bankruptcy Code, subject to the UBS Step-Back.

10 8. If authorized in their employment applications, the Trustee, any successor trustee
11 and his or her professionals may draw down monthly against the Fund pursuant to the order entered
12 on or about December 10, 2019, via Professional Fee Statements.

13 9. This stipulation shall be binding upon any successor trustee and any Chapter 7
14 trustee in this case.

15 A true and correct copy of the Stipulation is attached as Exhibit "1" to the Motion.

16 The Stipulation terms are in the best interests of the Debtor's estate, in that they will clarify
17 sale terms agreed upon by the Trustee and UBS, which were ultimately approved by this Court, and
18 establish rules for how the Litigation Fund and Appeals Escrow will be administered.

19 The Motion is based upon this notice and the Memorandum of Points and Authorities,
20 Declaration of Michael A. McConnell, and Request for Judicial Notice attached to the Motion, the
21 papers and pleadings on file in this case, and such other evidence that may be presented to the
22 Court.

23 **PLEASE TAKE FURTHER NOTICE** that any opposition to the Motion must be in
24 writing in the format required by the Local Bankruptcy Rules, filed with the Clerk of the Court and
25 served upon counsel for the Trustee, at the address in the upper left corner of the face of this

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1 Notice, and upon the United States Trustee, at 1415 State Street, Suite 148, Santa Barbara,
2 California 93101, not later than 14 days before the hearing. Failure to comply with this procedure
3 may be deemed consent to the granting of the relief requested.

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5 DATED: October 29, 2020

DANNING, GILL, ISRAEL & KRASNOFF, LLP

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7 By: /s/ Eric P. Israel

8 ERIC P. ISRAEL

9 Attorneys for Michael A. McConnell,
Chapter 11 Trustee

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067-6006.

A true and correct copy of the foregoing document entitled (*specify*): NOTICE OF HEARING ON TRUSTEE'S MOTION FOR APPROVAL OF STIPULATION BETWEEN MICHAEL A. MCCONNELL, TRUSTEE, AND UBS AG, LONDON BRANCH AND UBS AG, STAMFORD BRANCH RE LITIGATION FUND AND ROYALTY FUND will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document.

On October 29, 2020 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL: On October 29, 2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on October 29, 2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 29, 2020
Date

Beverly Lew
Printed Name

/s/ Beverly Lew
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

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